TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 515.

GEORGE W. CROSSMAN ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 15, 1900.

(18,000.)

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(18,000.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 26, 1900.

1 United States Circuit Court for the Southern District of New York.

In the Matter of the Application of W. H. CROSSMAN & BRO. for a Review of the Decision of the General Appraisers as to the Rates and Amount of Duties on Certain Merchandise Imported by Them per S. S. Coastwise. Date of Entry, Ap'l 26, 1900. Entry No. 70457. 3132.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioner-, W. H. Crossman & Bro., being dissatisfied with a decision made on or about the 27th day of July, 1900, by the board of general appraisers designated by the Secretary of the Treasury, for and on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as to the rate and amount of duty chargeable on certain merchandise imported at said port by your petitioner- as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

2 The said merchandise consists of a consignment, among other goods, of whiskey, brandy and jam. The same was classified and assessed by said collector for duty at the rates applicable to such goods under provisions of the tariff act of July 24, 1897. Your petitioner- being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth the reasons for their objection thereto, claiming the said merchandise to be free of duty on the ground that it is merchandise brought from one portion of the United States territory into another.

Thereafter the said board of general appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said board herein complained of your petitioner- say—

The board of appraisers erred as matter of law:

1. In not holding that the merchandise in question having been brought from the Hawaiian islands which had been annexed to and made a part of the territory of the United States were entitled to entry without payment of duty.

2. In not holding that the tariff act of July 24, 1897, did not apply to the merchandise in question because it was not imported from foreign countries.

3. In not holding that so much of the joint resolution of Congress of July 7th, 1898, as provides that "until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian islands the existing customs relations of the Hawaiian islands with the United States and other countries shall re-

3 main unchanged," is in conflict with the provisions of subdivision 1, section 8, article 1 of the Constitution of the United

States that "all duties, imposts and excises shall be uniform throughout the United States," and also with subdivision 5, section 9, article 1 of the Constitution of the United States that "no tax or duty shall be laid on articles exported from any State," and therefore that said provision is null and void.

4. In not sustaining the protest and overruling the action of the collector.

5. In sustaining the action of the collector and overruling the protest.

Accordingly, your petitioner- respectfully pray the court to order the said board of general appraisers to return to the court the record and evidence taken by the said board, together with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision, and to determine the questions of law and fact involved in the same.

Dated New York, August 14th, 1900.

W. H. CROSSMAN & BRO., *Petitioner-*,
By CURIE, SMITH & MAXWELL,
Attorneys, 20 William St., New York City.

Endorsed: Filed Aug. 4, 1900. John A. Shields, clerk.

4 Know all men by these presents, that I, William H. Northup, am held and firmly bound unto the United States of America in the sum of fifty dollars to be paid to the said United States of America,

For the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with my seal, and dated the — day of August, in the year of our Lord one thousand nine hundred.

Whereas W. H. Crossman & Bro. have applied to the circuit court of the United States for the southern district of New York for a review of the questions of law and fact involved in certain decisions of the board of United States appraisers made upon the entry of certain merchandise imported by them per S. S. Coastwise, April 26th, 1900:

Now, therefore, the condition of this obligation is such, that if the above-named W. H. Crossman & Bro., shall prosecute said proceeding with effect and pay all damages and costs which shall be awarded against them therein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

WM. H. NORTHUP. [SEAL.]

Sealed and delivered and taken and acknowledged, this 6th day of Aug., 1900, before me.

H. SMITH,
Notary Public, N. Y. C.

5 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

William H. Northup, being duly sworn, deposes and says that he does business in the southern district of New York, in the city of New York; that he is worth the sum of one hundred dollars, over and above all his just debts and liabilities.

[SEAL.] WM. H. NORTHUP.

Sworn to this 6th day of August, 1900, before me—

H. SMITH,
Notary Public, N. Y. C.

This bond is approved as to form and amount and sufficiency of surety.

Dated New York, Aug. 6th, 1900.

E. H. LACOMBE,
U. S. Circuit Judge.

Endorsed: Filed Aug. 13th, 1900. John A. Shields, clerk.

6 At a stated term of the United States circuit court for the southern district of New York held at the United States court and post-office building, in the city of New York, on the — day of August, 1900.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of W. H. CROSSMAN & BRO. for a Review of the Decision of the General Appraisers as to the Rates, &c., of Duties on Certain Merchandise Imported by Them per S. S. Coastwise, April 26, 1900.

Upon reading and filing the annexed petition of W. H. Crossman & Bro., importers of the merchandise therein described, and on motion of Currie, Smith & Mackie, attorneys for said petitioners,

It is ordered, that the board of appraisers at the port of New York return to this court the record and the evidence taken by them in each of the above-entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

E. H. LACOMBE,
U. S. Circuit Judge.

Endorsed: Filed Aug. 13, 1900. John A. Shields, clerk.

7 In the Circuit Court of the United States for the Southern District of New York.

J. R. Lake, chief clerk, board of U. S. general appraisers.

Return of the board of United States general appraisers to the order of Hon. E. Henry Lacombe, circuit judge. Dated New York, August 23, 1900.

In the Matter of the Application of W. H. CROSSMAN & BRO. for the Review of the Decision of the Board of U. S. General Appraisers as to the Rate, etc., of Duty on Certain Importations from the Hawaiian Islands, per S. S. Coastwise, April 26, 1900. Suit No. 3132.

The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that a letter, hereto annexed as Exhibit A, was received from the collector of customs at New York, submitting, under the provisions of section 14 of the act of June 10, 1890, the protest marked Exhibit B, and described as follows:

8

Colls. No.	Board No.	Protestants.	Vessels.	Date of entry.
7059	69270–F	W. H. Crossman & Bro.	Coastwise.	Ap'l 26, 1900.

On July 27, 1900, the board rendered its decision upon said protest. A copy of the opinion known as G. A. 4735, is hereto annexed, marked Exhibit C.

EXHIBIT A.

#69270 F.

OFFICE OF THE COLLECTOR OF CUSTOMS,
PORT OF NEW YORK, N. Y., *June* 11, 1900.

Board of U. S. general appraisers, port of New York.

GENTLEMEN: I submit the protest of W. H. Crossman & Bro., #7059, against the assessment of duty as made by this office on certain products of the Hawaiian islands, imported by them — "Coastwise," Apr. 26, 1900, and entered for consumption.

As to the claim in the protest that the goods covered thereby, being the product of the Hawaiian islands, and imported therefrom, are, therefore, entitled to free entry as the product of the United States, I have to state that sec. 3 of article IV of the Constitution of the United States provides that Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property of the United States. The only way that Congress can give effect to this provision of the Constitution is by legislation. Note the principle enunciated in G. A. 4658, and also

the fact that at the time this merchandise was imported and
9 entered for consumption, the act of April 30, 1900, entitled "An act to provide a government for the Territory of Hawaii" had not been enacted.

Respectfully yours,

J. J. COUCH,
Special Deputy Collector.

3 enclosures.

69270 F

Custom-house, collector's office.

NEW YORK, N. Y., *June* 11, 1900.

G. R. Bidwell, collector.

Subject:
Protest #7059 of W. H. Crossman & Bro.

Received by board of U. S. general appraisers, June 12, 1900.

3

EXHIBIT B.

NEW YORK, *May 12th*, 1900.

Collector of customs, New York.

SIR: We hereby protest against your decision, liquidation and assessment of duties as made by you on our importations below mentioned consisting of certain whiskey, brandy and jam contained in the cases or packages marked and numbered as described on the entries and invoices thereof, to which for more certainty of description, reference is hereby had, claiming that as these goods were not imported from foreign countries but were brought from one part of the United States territory into another they are not subject to the duties levied by you or any other import duties.

10 We further claim that the Hawaiian islands having been by joint resolution of Congress of July 7th, 1898 (30 U. S. Stat. at Large, 750) annexed to and made a part of the territory of the United States, no duties can lawfully be levied on goods coming into the ports of the United States from said islands.

We further claim that the Hawaiian islands being part of the territory of the United States the Constitution of the United States and each and every part thereof is in force in said islands and was at the time of the shipment of the merchandise in question.

We further claim that so much of the said joint resolution of Congress of July 7th, 1898, as provides that "until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian islands the existing customs relations of the Hawaiian islands with the United States and other countries shall remain unchanged," is in conflict with the provisions of subdv. 1, sect. 8, art. 1, of the Constitution of the United States that "all duties, imposts and excises shall be uniform throughout the United States," and also with subdv. 5, sect. 9, art. 1, of the Constitution of the

United States that "no tax or duty shall be laid on articles exported from any State" and therefore that said provision is null and void.

Vessel.	From	Via	Entered Ap'l 26, 1900,	Trans. B'd No.
W. G. Irwin,	Honolulu,	San Francisco,	Entry No. 70457.	2171.

Liquidated May 11, 1900.
Marks & Nos. as per invoice & entry.

W. H. CROSSMAN & BRO.,
CURIE, SMITH & MAXWELL,
Att'ys, 20 *William St., New York City.*

11

7059—69270 F.

W. H. Crossman & Bro.,

W. G. Irwin

Mdse. from U. S. terr.

Hawaiian products

Chairman Board
of Classification.

Custom-house,
New York,
May 12 1900
Received

Vessel	Lot 1900	Liq. 1900	Pro. 1900
Coastwise	April 26	May 11	May 12

EXHIBIT C.

Decisions by the Board of General Appraisers.

(22400—G. A. 4735.)

Imports from the Hawaiian Islands.

(1.) The joint resolution of Congress of July 7, 1898, provided for the annexation of the Hawaiian islands to the United States, and declared that "until legislation shall be enacted extending the United States customs, laws and regulations to the Hawaiian islands, the existing customs, relations of the Hawaiian islands with the United States and other countries shall remain unchanged." Duties were accordingly assessed under the Dingley tariff act upon goods brought from Honolulu to York on April 26th, 1900, against the protest of the importers claiming free entry on the ground that the Hawaiian islands had become part of the territory of the United States by virtue of the joint resolution.

12 (2.) Whether the Constitution extends, *ex proprio vigore*, with all its limitations, to newly acquired territory not yet admitted as a State, or whether the power of Congress over the terri-

tories is general and plenary to make such rules and regulations as it may see fit, subject only to constitutional limitations in favor of personal rights, *quære*.

(3.) Whether newly acquired territory remains a foreign country for tariff purposes until Congress, by special legislation, extends the tariff and revenue laws over it, and established his collection districts therein, *quære*.

(4.) It seems that upon these points the opinions of the courts and of jurists are in conflict, if not inextricable confusion.

(5.) It is a well-settled principle that a court should not pronounce an act of Congress unconstitutional unless its incompatibility with the Constitution is clear, decided and inevitable.

(6.) The protest of the importers claimed the unconstitutionality of legislation continuing in force tariff duties between the Hawaiian islands and the United States, as being in violation of those clauses of the Constitution which provide (*a*) that duties shall be uniform throughout the United States; (*b*) that no tax shall be laid on articles exported from any State.

(7.) Held, that, in view of the before-mentioned considerations, the protest should be overruled, the question being deemed one of sufficient importance to require the determination of the Supreme Court.

Before the U. S. general appraisers at New York, July 27, 1900.

In the Matter of the Protest, 69270 *f*–7059, of W. H. CROSSMAN & Bro., against the Decision of the Collector of Customs at New York, N. Y., as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per Coastwise and Entered April 26, 1900.

13 *Opinion of Somerville, General Appraiser.*

The question involved in this protest is the constitutional right of Congress to levy duties on merchandise imported from the Hawaiian islands after the promulgation of the joint resolution to provide for annexing the Hawaiian islands to the United States, approved July 7, 1898 (30 U. S. Stat. L., p. 750–'1). The first paragraph of this joint resolution reads as follows:

"Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the government of the Hawaiian islands, together with every right and appurtenance thereunto appertaining: Therefore, etc."

A subsequent paragraph reads as follows:

Until legislation shall be enacted extending the United States

customs laws and regulations to the Hawaiian islands the existing customs relations of the Hawaiian islands with the United States and other countries shall remain unchanged.

The goods in question which were imported from Honolulu into the port of New York on the 26th day of April, 1900, consist of whisky, brandy, and jam. These articles were assessed for duty under appropriate paragraphs of the tariff act of July 24, 1897, and no question is made as to the correctness of the collector's classification, it being conceded that, if the articles were dutiable at all under said act, the proper duties were assessed upon them.

14 The contention of the importers is that, at the time of the shipment and entry of the goods, the Hawaiian islands constituted a part of the territory of the United States, and that, for this reason, they were not subject to duty under the Dingley act, but were entitled to free entry. The right of Congress to levy these duties is denied, as being in conflict with the provisions of article 1, section 8, subdivision 1, of the Constitution of the United States, which provides that "all duties, imposts and excises shall be uniform throughout the United States;" and also with the provisions of section 9, subdivision 5, of the same article, that "no tax or duty shall be laid on articles exported from any State."

The antagonistic contentions involved in this protest may be briefly formulated as follows:

It is contended on the part of the Government that the Federal Constitution does not extend, *ex proprio vigore*, with all its limitations, to newly acquired territory not yet admitted as a State; that the power of Congress over the territories is general and plenary to make such rules and regulations for their government as, in its discretion, that body may see fit to do, subject only to those fundamental limitations in favor — personal rights which are formulated in the Constitution and in its amendments, it being contended that these limitations arise by inference and from the general spirit of that instrument, rather than by any express and direct application of its provisions.

A further contention of the Government is that, until Congress by special legislation extends the tariff and other revenue laws over newly acquired territory, and establishes therein collection districts, with ports of entry and clearance for vessels such territory remains a foreign country for tariff purposes, and its ports are not domestic ports within the meaning of the laws of Congress.

15 The importers, on the other hand, contend that Congress is the creature of the Federal Constitution; that it necessarily derives all its just powers from the provisions of that instrument, and that, while in legislating for the Territories, it may properly exercise the combined powers of the general and of a State government, nevertheless the Federal Government is one of delegated powers, and all of its legislative authority must be exercised in subordination to the principles, and subject to the limitations of the Constitution; and, as stated in Pollard *v.* Hagan (3 How., 225), "every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it."

On these issues, the decisions of the courts and the opinions of jurists are, apparently, in a state of conflict, if not inextricable confusion. The question of the constitutional powers of Congress over newly acquired territory is conceded to be *to* one of great moment, in the solution of which vast consequences are involved, in view of the present status of a large territory recently ceded by the Kingdom of Spain to this country, under the provisions of the treaty of Paris, made December 10, 1898, (30 Stat., p. 1754). Political parties have divided on this issue, and a question purely constitutional thus becomes political in its nature and consequences. It must finally be settled by an authoritative decision at the hands of the highest judicial authority in the land, the Supreme Court of the United States, the final arbiter of all such disputed judicial questions.

The legal authorities bearing on this question are cited at length in the decision of the board *In re* Goetze & Co. (G. A. 4658), which was affirmed on appeal by the United States circuit court for the southern district of New York, per Townsend, J., in suit No. 3076, decided June 14, 1900. (See also, *Ex parte* Ortiz, 100 Fed. 16 Rep., 955, and authorities there cited; also Lessee of Pollard's Heirs *v.* Kibbe, 14 Peters, 353, 376).

In pronouncing on the constitutionality of a legislative act, the rule adopted by the courts is to indulge the presumption that such act is constitutional until clearly convinced to the contrary. (Edwards *v.* Williamson, 70 Ala., 145.) In other words, "it is the duty of the court * * * so to construe the statute, if practicable, as to give it force and validity, rather than avoid or render it nugatory." (Cooley's Con. Limitations, p. 186.) "In passing upon the constitutionality of an act of Congress, all the presumptions are in favor of the law, and courts will not pronounce it unconstitutional unless its incompatibility is clear, decided, and inevitable." (Sarony *v.* Burrow Giles Lith. Co., 17 Fed. Rep., 591; Fletcher *v.* Peck, 6 Cranch, 87.)

In view of this well-settled principle, and of the conflict of authorities, the board thinks it proper to overrule the protest and affirm the collector's decision, which is accordingly ordered.

H. M. SOMERVILLE,
I. F. FISCHER,
W. B. HOWELL,
Board of Classification of U. S. General Appraisers.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
I. F. FISCHER,
W. B. HOWELL,
Board of U. S. General Appraisers.

Endorsed: Filed Aug. 23, 1900.
2—515

17 United States Circuit Court, Southern District of New York.

W. H. CROSSMAN & BRO.
vs.
THE UNITED STATES. } No. 3132.

Appeal by the importers from a decision of the board of United States general appraisers.

TOWNSEND, *J.*:

On April 26, 1900, the appellants imported from Honolulu into the port of New York, certain whiskey, brandy and jam, on which duty was assessed under appropriate paragraphs of the tariff act of July 24, 1897. There is no question as to the classification or rate of duty assessed provided said goods were subject to any duty.

The contentions of the importers are as follows:

First. That the Constitution of the United States, certainly so far as it imposes limitation, and restrictions upon the power of Congress, is in full force and effect in all territory of the United States, without express legislation by Congress extending it to the territory.

Second. That among the restrictions and limitations to which Congress is subjected in dealing with Territories, is the requirement that all duties, imposts and excises shall be uniform throughout the United States.

Third. That one of the limitations under which Congress legislates is, that no tax or duty shall be laid on articles exported from any State.

Fourth. That a statute which in its enacting clause provides
18 that certain rates of duty therein specified in tariff schedules and paragraphs shall be paid upon all articles imported from foreign countries, does not apply to goods brought into one of the ports of the United States from a place which has theretofore been by joint resolution of Congress annexed as a part of the territory of the United States.

The joint resolution for annexation of the Hawaiian islands to the United States became a law on July 7, 1898.

The preamble thereof having recited that the Government of the Republic of Hawaii had "signified its consent * * * to cede absolutely and without reserve to the United States of America all rights of sovereignty," provided *inter alia* as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian islands and their dependencies be and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

"The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian islands; but the Con-

gress of the United States shall enact special laws for their management and disposition. * * *

"Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian islands the existing customs relations of the Hawaiian islands with the United States and other countries shall remain unchanged."

Another section of said resolution provides for the government of such islands in such manner as shall be directed by the Presi-
19 dent of the United States until Congress shall make provisions for such government.

Various aspects of these constitutional questions have been discussed in *Ex parte* Oritz, 100 Fed. Rep., 955, and in Goetze *vs.* United States, 103 Fed. Rep., 72. These and other cases involving the status of our dependencies and the relation of the United States thereto are now before the Supreme Court of the United States.

The distinction- claimed between the case at bar and the Goetze case are as follows:

1. This is not a case of territory acquired through treaty with any foreign power. 2. It does not involve any question of military occupation. 3. The Hawaiian islands are not foreign country because they have been annexed as a part of the territory of the United States and subject to its sovereign dominion.

This case has been exhaustively argued by counsel on both sides and said argument and the distinction suggested have been duly considered. It is true as contended for by counsel for the importers, that this joint resolution was substituted for a proposed treaty which was withdrawn and that the preamble showed that the government of Hawaii ceded "absolutely and without reserve to the United States of America, all rights of sovereignty," etc. It is also true that the foregoing distinctions present a case differing in some of its aspects from the Goetze case.

But in view of the present conflict of authority and the probability that all these questions will be finally answered in the decisions of the Supreme Court, upon similar cases now pending therein, it is clearly the duty of this court to construe the statute as constitutional and to affirm the decision of the board of general appraisers.

"In passing upon the constitutionality of an act of Con-
20 gress, all the presumptions are in favor of the law, and courts will not pronounce it unconstitutional unless its incompatibility is clear, decided, and inevitable."

(Sarony *v.* Burrew, Giles Lith. Co., 17 Fed. Rep., 591; Fletcher *v.* Peck, 6 Cranch, 87.)

The decision of the board is therefore affirmed.

W. Wickham Smith, counsel for the importers; Henry C. Platt, ass't U. S. attorney for the United States.

(Endorsed:) No. 3132. United States circuit court, southern dist. of New York. W. H. Crossman & Bro. *v.* The United States. Opinion. Townsend, J U. S. circuit court. Filed Dec. 13, 1900. John A. Shields, clerk.

21 United States Circuit Court, Southern District of New York.

W. H. CROSSMAN & BRO. *vs.* THE UNITED STATES. } #3132.

It is hereby stipulated that the firm of W. H. Crossman & Bro. is composed of George W. Crossman and Hermann Sielcken, and that the title of this suit be changed accordingly to read as follows: George W. Crossman and Hermann Sielcken, composing the firm of W. H. Crossman & Bro., *vs.* The United States, and that an order to that effect may be entered without notice.

Dated New York, December 13th, 1900.

CURIE, SMITH & MAXWELL,
Attorneys for Importers, Petitioners.
HENRY L. BURNETT,
Attorney for the United States.

Upon the foregoing consent of the parties hereto it is hereby—

Ordered that the title of this suit be amended so as to read George W. Crossman and Hermann Sielcken, composing the firm of W. H. Crossman & Bro., *vs.* The United States.

Dated New York, Dec. 13th, 1900.

WM. K. TOWNSEND, *Judge.*

(Endorsed:) No. 3132. United States circuit court, southern district of New York. W. H. Crossman & Bro. *vs.* The United States. Consent and order. Curie, Smith & Maxwell, attorneys for importers, 22 William St., N. Y. city. U. S. circuit court. Filed Dec. 14, 1900. John A. Shields, clerk.

22 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms in the post-office building in the city of New York, on the 13th day of December, in the year of our Lord one thousand nine hundred.

Present: The Hon. William K. Townsend, judge.

GEORGE W. CROSSMAN ET AL. *vs.* THE UNITED STATES. } "A." Suit No. 3132.

The above cause coming on for hearing and determination before this court on the application of William H. Crossman *et al.*, importers, for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein, and on the return of the board of general appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon—

Now, after hearing Henry C. Platt, assistant U. S. attorney, on behalf of the collector for affirmance, and W. Wickham Smith, Esq., counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. attorney—

It is ordered, adjudged and decreed that there was no error in said proceedings before said board of general appraisers, and that their decisions herein be, and the same are hereby, in all things affirmed.

(Signed) WM. K. TOWNSEND,
U. S. Judge.

(Endorsed:) "A." Suit No. 3132. U. S. circuit court, southern dist. of New York. George W. Crossman *et al. vs.* The United States. Judgment of affirmance. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Dec. 13, 1900. John A. Shields, clerk.

23 United States Circuit Court, Southern District of New York.

GEORGE W. CROSSMAN ET AL., &C.,
vs.
THE UNITED STATES. } # 3132.

The above-named importers G. W. Crossman, *et al.*, conceiving themselves aggrieved by the decision entered on the 14th day of December, 1900, affirming the decision of the board of general appraisers, do hereby appeal from said decision to the Supreme Court of the United States, and they pray that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decision was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, December 14th, 1900.

CURIE, SMITH & MAXWELL,
Attorneys for Appellant-, 22 William Street, New York City.

It is hereby certified that the questions involved in this case, described in the annexed appeal, are, in view of this court, of such importance as to require a review of the decision of this court by the Supreme Court of the United States and the appeal from said decision to said Supreme Court of the United States is therefore hereby allowed.

Dated New York, December 14th, 1900.

WM. K. TOWNSEND, *Judge.*

(Endorsed:) No. 3132. United States circuit court, southern district of New York. George W. Crossman *et al. vs.* The United States. Petition & allowance of appeal. Curie, Smith & Maxwell, att'ys for appellants, 22 William St., N. Y. city. A copy of the within paper has been this day received at this office. Dec. 15, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Dec. 14, 1900. John A. Shields, clerk.

24 United States Circuit Court, Southern District of New York.

GEORGE W. CROSSMAN ET AL., ETC.,
vs.
THE UNITED STATES. } # 3132.

Please take notice that the undersigned on behalf of G. W. Crossman, *et al.*, hereby appeal from the decision of this court, rendered herein and entered on the 14th day of December, 1900, to the Supreme Court of the United States.

Dated New York, December 14th, 1900.

Yours, etc., CURIE, SMITH & MAXWELL,
Attorneys for Appellant-, # 22 William St., N. Y. City.

To Henry L. Burnett, Esq., U. S. district attorney, and John A. Shields, clerk U. S. circuit court.

(Endorsed:) No. 3132. United States circuit court, southern district of New York. G. W. Crossman *et al. vs.* The United States. Notice of appeal. Curie, Smith & Maxwell, att'ys for appellants, 22 William St., N. Y. city. U. S. circuit court. Filed Dec. 15, 1900. John A. Shields, clerk.

25 Supreme Court of the United States.

GEORGE W. CROSSMAN ET AL., ETC.,
vs.
THE UNITED STATES. } #3132.

Assignment of Errors.

Now come before the Supreme Court of the United States the said George W. Crossman, *et al.*, composing the firm of W. H. Crossman & Bro., and say that in the record of the proceedings aforesaid there is manifest error in this, to wit:

The circuit court erred—

1. In holding that the Hawaiian islands were a foreign country within the meaning of the enacting clause, section 1 of the tariff act of July 24, 1897.

2. In holding that the merchandise brought to New York from the Hawaiian islands in April, 1900, was subject to duty under the tariff act of July 24, 1897.

3. In not holding that the provision in the joint resolution of July 7th, 1898, annexing the Hawaiian islands, that "until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian islands, the existing customs relations of the Hawaiian islands with the United States and other countries shall remain unchanged" was in conflict with subdivision 1, section 8, article 1, of the Constitution of the United States, providing that "all duties, imposts and excises shall be uniform throughout the United States."

26 4. In not holding that the above-quoted provision of said joint resolution of July 7, 1898, annexing the Hawaiian islands,

was in conflict with the provisions of subdivision 5, section 9, article 1 of the Constitution of the United States that "no tax or duty shall be levied on articles exported from any State."

5. In not holding that the merchandise brought from the Hawaiian islands to New York in April, 1900, was exempt from duty as merchandise brought from one part of the territory of the United States to another part.

6. In not sustaining the protest of the importers herein and reversing the decision of the board of United States general appraisers.

7. In affirming the decision of the board of general appraisers herein and overruling the protest of the importers.

Dated New York, December 14th, 1900.

CURIE, SMITH & MAXWELL,
Attorneys for Importers, Appellants,
22 William Street, N. Y. City.

(Endorsed:) No. 3132. Supreme Court of the United States. George W. Crossman *et al.*, &c., *vs.* The United States. Assignment of errors. Curie, Smith & Maxwell, attorneys for importers, 22 William St., N. Y. city. U. S. circuit court. Filed Dec. 15, 1900. John A. Shields, clerk.

27 Known all men by these presents, that I, William H. Northup, am held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars, to be paid to the said United States of America. For the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with my seal, and dated the 15th day of December in the year of our Lord one thousand nine hundred.

Whereas, George W. Crossman *et al.* have appealed to the Supreme Court of the United States from a decision of the United States circuit court for the southern district of New York, affirming a decision of the board of United States appraisers made upon the entry of certain merchandise imported by them per S. S. Coastwise, April 28, 1900:

Now, therefore, the condition of this obligation is such, that if the above-named George W. Crossman *et al.* shall prosecute said proceeding with effect and pay all damages and costs which shall be awarded against them therein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

(Signed) WM. H. NORTHUP. [SEAL.]

Sealed and delivered and taken and acknowledged, this 15th day of December, 1900, before me.

(Signed) F. FINKLER, [SEAL.]
Notary Public.

28 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

William H. Northup, being duly sworn, deposes and says that he does business in the southern district of New York, in the city of New York; that he is worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

(Signed) WM. H. NORTHUP.

Sworn to this 15th day of December, 1900.

(Signed) F. FINKLER, [SEAL.]
Notary Public.

This bond is approved as to form and amount and sufficiency of surety.

Dated New York, December 15th, 1900.

(Signed) WM. K. TOWNSEND, *Judge.*

By the Honorable William K. Townsend, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear before a Supreme Court of the United States, to be holden at Washington, D. C., on the 10th day of Jan'y, 1901, pursuant to a petition filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein George W. Crossman, *et al.*, appeal from a decision against them rendered by the circuit court for the southern district of New York, on December 13, 1900,
29 and you are to show cause, if any there be, why the decision in said United States circuit court mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 17th day of December, in the year of our Lord, one thousand nine hundred and of the Independence of these United States the one hundred and twenty-fifth.

(Signed) WM. K. TOWNSEND, *Judge.*

(Endorsed:) Supreme Court of the United States. George W. Crossman *et al. vs.* The United States. Citation. Curie, Smith & Maxwell, attorneys for importers, 22 William St., N. Y. city. A copy of the within paper has been this day received at this office. Dec. 17, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Dec. 17, 1900. John A. Shields, clerk.

30 UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second

circuit, do hereby certify that the foregoing pages, numbered from one to 29, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled George W. Crossman *et al.*, &c., appellants, against The United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 17th day of December, in the year of our Lord one thousand nine hundred, and of the Independence of the said United States the one hundred and twenty-fifth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

[Two-cent United States internal-revenue stamp, canceled Dec. 17, 1900.]
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31 [Endorsed:] United States Supreme Court. George W. Crossman *et al.*, appellants, *vs.* The United States of America, appellee. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No., 18,000. S. New York C. C. U. S. Term No., 515. George W. Crossman *et al.*, appellants, *vs.* The United States. Filed December 18th, 1900.